

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

SINGLETARY,

Defendant.

Case No. [12-cr-00798-YGR-1](#) (DMR)

**ORDER GRANTING GOVERNMENT'S
MOTION TO PERMIT DISCOVERY
AND FIND WAIVER OF ATTORNEY-
CLIENT PRIVILEGE**

Re: Dkt. No. 77

Defendant Michael Singletary, proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2255 (the “§ 2255 motion”) in which he raised three claims. Defendant argues, *inter alia*, that he was denied effective assistance of counsel because his counsel allegedly failed to appeal his sentence. [Docket No. 73.] On June 25, 2015, the Honorable Yvonne Gonzalez Rogers denied in part the § 2255 motion, finding that Defendant was not entitled to relief as to two of the three claims. As to Defendant’s claim of ineffective assistance of counsel with respect to his sentence, the court ordered the government to respond to Defendant’s argument and set a briefing schedule. [Docket No. 76.]

On July 6, 2015, the government filed a motion for an order permitting discovery, finding a waiver of attorney-client privilege with respect to the § 2255 motion, and staying the briefing schedule. [Docket No. 77.] Judge Gonzalez Rogers referred the government’s motion to the undersigned, as well as all discovery, and stayed the briefing schedule. [Docket No. 80.] On July

1 9, 2015, this court ordered Defendant to file a response to the government's motion and to indicate
2 whether he chose to proceed with his claim of ineffective assistance of counsel, which would
3 result in a limited waiver of the attorney-client privilege. [Docket No. 81.]

4 Defendant timely filed a response in which he states that he waives the attorney-client
5 privilege "to the extent required to resolve his claims made in his section 2255-motion" and "does
6 not wish to withdraw any of his claims." [Docket No. 82.] Therefore, the government's motion
7 for an order finding Defendant has waived the attorney-client privilege as to the contentions made
8 in his § 2255 motion challenging his sentence on grounds of ineffective assistance of counsel is
9 GRANTED. *See Bittaker v. Woodford*, 331 F.3d 715, 716 (9th Cir. 2003) ("It has long been the
10 rule in the federal courts that, where a habeas petitioner raises a claim of ineffective assistance of
11 counsel, he waives the attorney-client privilege as to all communications with his allegedly
12 ineffective lawyer."). This waiver is limited to those materials the government needs to respond to
13 the claim of ineffective assistance of counsel. *See Lambright v. Ryan*, 698 F.3d 808, 818 (9th Cir.
14 2012) (noting "such waiver is narrow and does not extend beyond the adjudication of the
15 ineffectiveness claim in the federal habeas proceeding," discussing *Bittaker* (citation omitted)).

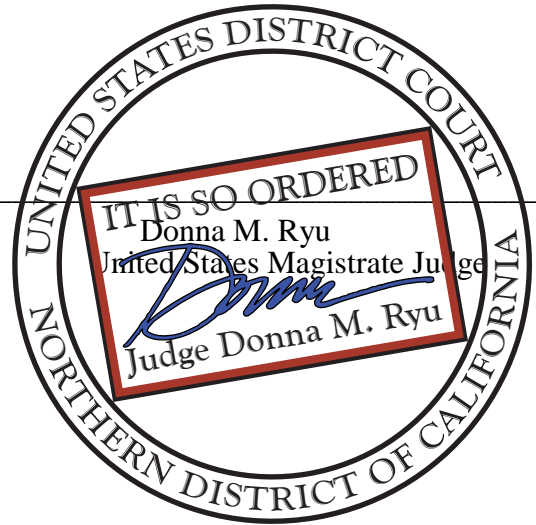
16 The court also finds that the government has shown good cause to permit discovery of
17 attorney-client materials relevant to Defendant's ineffective assistance of counsel claim so that it
18 may respond to the claim. *See Bittaker*, 331 F.3d at 728. The government may question
19 Defendant's attorney, Kenneth H. Wine, regarding his communications with Defendant and may
20 review any written communications with Defendant relating to the ineffectiveness claim. All such
21 documents and information shall be considered "protected information" and shall not be used for
22 any purpose other than the litigation of Defendant's § 2255 motion. *See id.* at 727-28 ("district
23 courts have the obligation . . . to ensure that the party given [access to attorney-client materials]
24 does not disclose these materials, except to the extent necessary in the habeas proceeding"). The
25 government may not disclose the material to any other persons, excluding other representatives of
26 the United States Attorney's Office or law enforcement agents who are assisting in responding to
27 the § 2255 motion.

28 By no later than August 25, 2015, the government shall submit for Judge Gonzalez

Rogers's approval a proposed amended briefing schedule regarding Defendant's § 2255 motion.

IT IS SO ORDERED.

Dated: August 18, 2015



United States District Court
Northern District of California